



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2022-0329; FRL-9699-02-R7]

Air Plan Approval; Missouri; Start-Up, Shutdown and Malfunction Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to incorporate revisions to a state regulation related to the reporting of start-up, shutdown, and malfunction (SSM) events in Missouri. The revisions to this rule include adding incorporations by reference to other state rules, including definitions specific to the rule and making administrative wording changes. These revisions meet the requirements of the Clean Air Act, do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally approved rules.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2022-0329. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: donohue.allie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to EPA.

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I. What is Being Addressed in this Document?

The EPA is taking final action to approve Missouri’s revisions to 10 Code of State Regulation (CSR) 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, which relate to reporting of SSM events in the Missouri SIP. On April 7, 2022, the EPA published a notice of proposed rulemaking (NPRM) which proposed to approve the SIP revision as submitted by Missouri on February 11, 2020 (87 FR 20367). The EPA received two comments from one commenter during the public comment period. The EPA’s

summary of those comments and our responses is contained in Section III of this document.

As described in section IX.H.3 of the February 2013 *Federal Register* document in which EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA), EPA reviewed the Missouri rule at issue in this action because it was included in a Sierra Club petition.¹ Sierra Club argued that this Missouri provision gave state personnel authority to determine where enforcement action should be taken based on information a source submits about excess emissions resulting from a malfunction, start-up or shutdown. In EPA's final action, EPA denied the petition on this provision and affirmatively found the provision to be consistent with the 2015 policy "on the basis that the provision is on its face clearly applicable only to Missouri state enforcement personnel and that the provision thus could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit where Missouri state personnel elect to exercise enforcement discretion." As a result, Missouri rule, 10 Code of State Regulation (CSR) 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, was not included in the 2015 SSM SIP Call. Because the Missouri submittal does not substantively alter this rule, EPA's previous conclusions relating to this provision's compliance with EPA's SSM policy remain unchanged. Further background information for this action can be found in

¹ Petition to Find Inadequate and Correct Several State Implementation Plans under Section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions (June 30, 2011).

Section III of EPA's NPRM.

These provisions in the SIP require the reporting of SSM events to the Missouri Department of Natural Resources (MoDNR). Specifically, the provisions set the time by which such notification must occur, define what constitutes an SSM event, and establish the required contents of the written report including but not limited to measures taken to mitigate the extent and duration of the excess emissions, measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

The EPA received the MoDNR's SIP revision submission on February 11, 2020. The EPA's full analysis of the revisions can be found in the technical support document (TSD) included in this docket.

In 10 CSR 10-6.050 Section (2) Definitions, the state incorporated definitions for "excess emissions" into subsection (A), "malfunction" into subsection (B), "shutdown" into subsection (C), and start-up into subsection (D). The definitions in the revision are the same as the definitions in the SIP approved 10 CSR 10-6.020. The revisions to Section (2) Definitions also move language about definitions not included in 10 CSR 10-6.050 into subsection (E). Because the language was already SIP-approved, and because the definitions relate to requirements related to informational reporting on SSM events, EPA finds that these revisions do not affect the stringency of

the SIP. The rule revisions also include minor word changes, which are administrative in nature and do not affect the stringency of the SIP.

EPA finds that approving these revisions into the Missouri SIP is consistent with EPA's policy as further described in EPA's NPRM.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from June 3, 2019 to July 3, 2019 and received 6 comments. Five comments were from industry groups and one comment was from EPA. The industry comments all related to reporting excess emissions as soon as possible. Ultimately, the State opted not to include additional language to this effect and maintained that notification must occur within two days. The EPA comment letter indicated that EPA did not have comments on the rule changes. Therefore, the state adequately addressed each comment. In addition, as explained above and in more detail in the NPRM and technical support document (TSD) which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Responses to Comments

On April 7, 2022, the EPA published a NPRM which proposed to approve the SIP revision as submitted by Missouri on February 11, 2020 (87 FR 20367). The public comment period on the EPA's proposed rule opened April 7, 2022 and closed on May 9, 2022. During this period, EPA received two comments from one commenter.

Comment 1: The commenter stated that the EPA did not call for a revision of 10 CSR 10-6.050 in the EPA's June 12, 2015 final rule titled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," (80 FR 33839, June 12, 2015). The commenter stated that EPA found that the provision clearly applies only to Missouri state enforcement at the time of rulemaking. The commenter agreed the provision should apply only to state enforcement but believes the provision could be clarified to reduce any chance that it would interfere with citizen or EPA enforcement.

Response 1: EPA agrees that if a state chooses to maintain state provisions related to SSM events, such provisions should be clear that they do not limit federal enforcement or citizen suit authority in order to be consistent with Clean Air Act requirements. Missouri's revisions to this rule which EPA proposed to approve in the NPRM were limited to largely administrative changes, such as removing unnecessary words and

adding in rule-specific definitions. Missouri did not request revisions to the remainder of the SIP-approved rule text; therefore the unchanged portions of the rule text were not at issue in this action. For these reasons, the comment on the clarity of this rule language with respect to federal enforcement or citizen suit authority is outside the scope of this action.

Further, as the commenter acknowledges, EPA previously found the provision in this action to not limit federal enforcement or citizen suit authority and therefore did not find it to be substantially inadequate to meet CAA requirements for the purposes of the 2015 SSM SIP Call. This prior EPA determination was open to notice and comment through EPA's 2015 SSM SIP Action, so commenters had a full opportunity to weigh in on this issue previously. As made clear in the proposal and restated here, EPA is not reopening the determination made in the 2015 SSM SIP Action in this rulemaking.

Comment 2: The commenter stated that the EPA determined a provision in Missouri's Restriction of Emission of Visible Air Contaminants rule, 10 CSR 10-6.220(3)(C), was substantially inadequate to meet CAA requirements in the 2015 SSM SIP Call setting a deadline for the state to respond to the SIP Call of November 22, 2016. The commenter further stated that the SIP-called 10 CSR 10-6.220(3)(C) remains in effect because EPA has not yet acted on Missouri's responsive November 2016 submittal.

The commenter urges EPA to address this unlawful loophole that is years overdue.

Response 2: EPA acknowledges this comment, though it does not raise any issue adverse to this current rulemaking. This comment is related to a different state rule and submission in front of the Agency for action. Therefore, this comment is outside the scope of this action. Although outside the scope of the present rulemaking, EPA notes that consistent with CAA section 113(g), the EPA recently published a proposed consent decree including a deadline by which EPA must finalize action on Missouri's 2016 submission responding to EPA's 2015 SSM SIP Call (87 FR 21118, Case No. 21-cv-6956). EPA anticipates taking expeditious action on Missouri's 2016 responsive submittal but no later than the date which will be set by the final consent decree when entered by the Court.

IV. What Action is the EPA Taking?

The EPA is taking final action to amend the Missouri SIP to incorporate revisions to state rule 10 CSR 10-6.050, *Start-Up, Shutdown, and Malfunction Conditions*, related to reporting of SSM events, in the Missouri SIP as submitted to EPA on February 11, 2020. On April 7, 2022, the EPA published a NPRM proposing to approve Missouri's February 11, 2020, SIP revision submittal (87 FR 20367). The EPA sought public comment on the NPRM and received two comments from one commenter. The EPA's responses to comments received is included in Section IV of this document. The EPA is taking final action after consideration of the

comments. Approval of these revisions will ensure consistency between State and federally approved rules. As described in the NPRM and the TSD, the EPA has determined that these changes meet the requirements of the CAA and will not adversely impact air quality or the stringency of the SIP.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri rule 10 CSR 10-6.050 described in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

VI. Statutory and Executive Order Reviews

² 62 FR 27968, May 22, 1997.

Under the Clean Air Act CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2022.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In §52.1320, the table in paragraph (c) is amended by revising the entry "10-6.050" to read as follows:

§52.1320 Identification of plan.

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(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6--Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.050	Start-Up, Shutdown, and Malfunction Conditions	1/30/2020	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2022-13314 Filed: 6/23/2022 8:45 am; Publication Date: 6/24/2022]